

SPEED POST



F.No. 198/15-18/2018-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6th FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 18/5/21

Order No. 101-104/2021-CX dated 18-5-2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/308-311/2017-18 dated 15.02.2018 passed by the Commissioner, CGST (Appeals), Meerut.

Applicants : The Pr. Commissioner of CGST, Meerut.

Respondent : M/s. Swati Menthol & Allied Chemicals Ltd., Rampur.

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**ORDER**

Revision Applications bearing nos. 198/15-18/2018-RA dated 25.05.2018 have been filed by the Pr. Commissioner of CGST, Meerut against the Order-in-Appeal No. MRT/EXCUS/000/APPL-MRT/308-311/2017-18 dated 15.02.2018 passed by the Commissioner, CGST (Appeals), Meerut whereby appeals filed by M/s. Swati Menthol & Allied Chemicals Ltd., Rampur (hereinafter referred to as the respondent) against the Orders-in-Original passed by the Deputy Commissioner of erstwhile Central Excise & Service Tax Division Rudrapur, in respect of the rebate claims filed by the respondent herein, have been allowed, as per details below:

Sl. No.	Appeal No. and date	Order-in-Original No. and date	Amount (in Rs.)
1.	467-CE/APPL-IMRT/MRT 2016 Dated 21.10.2016	245/CE/Reb/Swati/Rdr/2016-17 Dated 18.08.2016	1,10,131/-
2.	468-CE/APPL-IMRT/MRT 2016 Dated 21.10.2016	244/CE/Reb/Swati/Rdr/2016-17 Dated 18.08.2016	90,102/-
3.	469-CE/APPL-IMRT/MRT 2016 Dated 21.10.2016	243/CE/Reb/Swati/Rdr/2016-17 Dated 18.08.2016	1,83,625/-
4.	470-CE/APPL-IMRT/MRT 2016 Dated 21.10.2016	246/CE/Reb/Swati/Rdr/2016-17 Dated 18.08.2016	2,55,033/-

2. Brief facts of the case are that the respondent herein filed the rebate claims, in respect of Central Excise Duty paid on export of 'CINEOLE', under Rule 18 of the Central Excise Rules, 2002 read with the Notification No. 19/2004-CE(NT) dated 06.09.2004. The original authority found that the export product, namely, CINEOLE is a by-product arising in manufacturing of Menthol and, as such, exempt from payment of duty, vide entry no. 135 of the Notification No. 12/2012-CE dated 17.03.2012. Accordingly, the rebate claims were rejected as duty was not payable on the export goods. The respondent filed appeals, mainly, on the following grounds:-

- (i) No SCN was issued nor was any opportunity of personal hearing provided to the appellant (i.e. the respondent herein) which was in violation of principles of natural justice.

- (ii) Export of CINEOLE was not disputed. Further the imported Eucalyptus Oil was used for manufacture of CINEOLE and CINEOLE is not a by-product, produced during manufacturing of Menthol.

The Commissioner (Appeals) decided the appeals in favour of the respondent broadly on the findings that the goods, namely, CINEOLE were also cleared for home consumption on payment of Central Excise Duty to which department had not taken any objection.

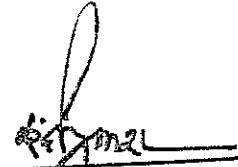
3. The revision applications have been filed, mainly, on the ground that the duty was not payable on the export goods, in terms of Notification No. 12/2012-CE dated 17.03.2012, and therefore, the rebate under Rule 18 cannot be granted since, as per Rule 2(e), 'duty' means the duty payable under Section 3 of the Central Excise Act, 1944. Several case laws, including the judgment of Hon'ble Punjab and Haryana High Court in the case of M/s. Nahar Industrial Enterprises Ltd. vs. Union of India {2009 (235) ELT 22 (P&H)}, have also been cited in the support of RAs. Cross Objections have been filed by the respondent on 21.10.2019.

3. Personal hearings in the matter were fixed on 20.02.2021, 30.04.2021 & 17.05.2021. Sh. Rakesh Mohan Saxena, Advocate appeared for the respondent, on 17.05.2021, and reiterated the contents of the cross objections filed in the matter. He highlighted that duty was payable and correctly paid on the export goods 'CINEOLE'. As such rebate is admissible. No one appeared for the applicant department nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for decision on the basis of records.

5. The Government has examined the matter. It is observed that the basic issue to be decided to determine whether the subject rebate claims are admissible or otherwise is whether the export goods, namely, CINEOLE, were unconditionally exempt from payment of Central Excise Duty, at the relevant time, or otherwise. It is the

contention of the respondent that the entry no. 135 of the Notification No. 12/2012-CE dated 17.03.2012, cited by the department to contend that duty was not payable, is not applicable in as much as they were not manufacturing 'menthol' in their subject Unit. The Government observes that sl. (v) of the said entry no.135 reads as "(v) Any intermediate or by-products arising in the manufacture of menthol, other than (i) to (iv)". Thus, the contention of the respondent that menthol was not manufactured by them ought to have been verified to decide whether exemption under the said entry is applicable. However, neither of the lower authorities have recorded a specific finding in respect of this contention of the respondent herein. In fact, the original authority has rejected the refund claims without even issuing a show cause notice and affording personal hearing. Therefore, the Government finds that it will be in the interest of justice that the matter is remanded to the original authority for de-novo consideration after issuing show cause notice and observing other principles of natural justice.

6. In view of the above, the orders of the lower authorities are set aside and the revision applications are allowed by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Pr. Commissioner of CGST,  
Opp. CCS University, Mangal Pandey Nagar,  
Meerut- 250 004.

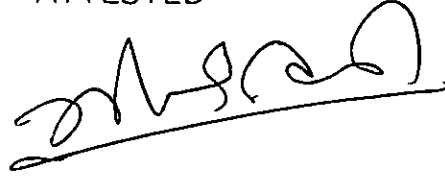
G.O.I. Order No. 101-14/21-CX dated 18-5-2021

Copy to: -

1. M/s. Swati Menthol & Allied Chemicals Ltd., Unit-II, Post Office: Modipur, Rampur, Distt : Rampur (U.P.).
2. Commissioner of CGST(Appeals), Meerut.

3. M/s. Lasa Consultancy (P) Ltd., D-60, Sector-2 Noida, U.P. - 201 301.
4. P.S. to A.S. (Revision Application).
5. Guard File.
- ✓ 6. Spare Copy.

ATTESTED



आशीष तिवारी / ASHISH TIWARI  
सहायक आयुक्त / Assistant Commissioner  
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क  
CGST, Central Excise & Customs  
राजस्व विभाग / Department of Revenue  
वित्त मंत्रालय / Ministry of Finance  
भारत सरकार / Government of India  
नई दिल्ली / New Delhi